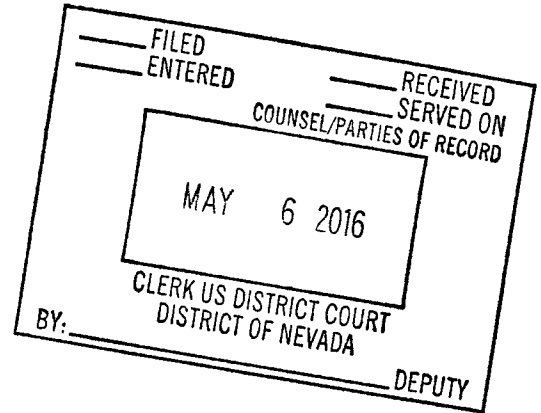


DANIEL G. BOGDEN
 United States Attorney
 District of Nevada
 ROGER W. WENTHE
 Nevada Bar No. 8920
 TROY K. FLAKE
 Assistant United States Attorneys
 U.S. Attorney's Office
 333 Las Vegas Boulevard South, Suite 5000
 Las Vegas, Nevada 89101
 Ph: 702-388-6336
 Fax: 702-388-6787
 Email: roger.wenthe@usdoj.gov
troy.flake@usdoj.gov

Attorneys for the United States



**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

KMI ZEOLITE, INC.; and ROBERT E.
 FORD,

Plaintiffs,

v.

UNITED STATES DEPT. OF THE
 INTERIOR; *et al.*,

Defendants.

ORDER

Case No.: 2:15-cv-2038-MMD-VCF

UNITED STATES DEPT. OF THE
 INTERIOR,

Counterclaimant,

v.

KMI ZEOLITE, INC.; ROBERT E. FORD;
 and R.A.M.M. CORP.,

Counterclaim Defendants.

JOINT MOTION TO AMEND SCHEDULING ORDER

The parties, by their undersigned attorneys, request the Court to amend the Scheduling Order in this matter to allow time for the parties to conduct mediation and potentially achieve a settlement of this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

These consolidated lawsuits are (1) an action under the Administrative Procedure Act (APA) seeking review of a decision by the federal Interior Board of Land Appeals (IBLA), finding that the plaintiffs in this case, KMI Zeolite, Inc. (KMI) and Robert Ford (Ford), and Counterclaim Defendant R.A.M.M. Corp. (RAMM), committed trespass on the public lands in connection with the operation of a milling site on private land; and (2) an action to quiet title to the private millsite which was used in connection with the trespasses allegedly involved in this lawsuit.

In the Scheduling Order previously entered in this case (#26), the Court determined that administrative review issues should be resolved first, because those issues are resolved solely by reviewing the administrative record prepared by the agency. The APA portion of the case requires no discovery, because APA review occurs solely on the administrative record developed by the agency. *Building Indus. Ass'n of the Bay Area v. U.S. Dept. of Commerce*, 792 F.3d 1027, 1032 (9th Cir. 2015). The Scheduling Order set briefing for the APA issues to begin on April 11, 2016 and conclude on June 10, 2016, with fact and expert discovery on the remaining issues, if any, to follow after the order resolving the APA issues. (#26.)

The parties¹ have determined in good faith that there is a substantial chance that these consolidated matters can be resolved through mediation. As a result, the parties wish to avoid the expense of litigation while they conduct that mediation. Scheduling the mediation will require lead time because most qualified mediators' schedules are booked well in advance. As a result, the parties request that all deadlines in this matter be extended by 90 days, to permit a full opportunity to conduct settlement discussions with a mediator. The parties therefore jointly propose the following schedule:

¹ Galtar, Inc., which is a defendant in the consolidated *ABC Recycling* case, does not join in this motion because it has filed a motion to dismiss that action which is pending.

PROPOSED SCHEDULING ORDER

The Parties propose the following schedule and related deadlines:

1. **Briefing on the APA issues** in the *KMI Zeolite* case shall be as follows:

Plaintiff's and Defendants' motions for summary judgment
and supporting briefs due: July 11, 2016

Briefs in response to motions for summary judgment due: August 10, 2016

Reply briefs in support of summary judgment due: Sept. 9, 2016

2. **Initial Disclosures** due: 30 days after order disposing of
APA issues in *KMI Zeolite*

3. **Amendment of Pleadings** due: 30 days after Initial Disclosures

4. **Fact Discovery** closes: 180 days after Initial Disclosures

5. **Expert Discovery:**

a. Last day to designate Plaintiffs' experts: 30 days after fact discovery close

b. Last day to designate Defendant's experts: 60 days after fact discovery close

c. Last day to designate rebuttal experts: 90 days after fact discovery close

c. Last day to complete expert discovery: 120 days after fact discovery
close

6. **Dispositive Motions** due: 30 days after expert discovery
close

7. **Pre-Trial Order:**

a. Last date to file if no dispositive motions are filed: 30 days after expert
discovery close

b. Last date to file if dispositive motions are filed: 30 days after order resolving
last dispositive motion

For the reasons set forth above, Plaintiff and Defendants respectfully and jointly request the
Court to enter its SCHEDULING ORDER in conformity with the dates proposed herein.

1 Dated: March 25, 2016

2 For the KMI Zeolite Plaintiffs:

3 /s/ Karen Budd-Falen

4 Karen Budd-Falen
5 300 E. 18th St.
6 P.O. Box 346
Cheyenne, WY 82003

7 For the ABC Recycling Plaintiffs:

8 /s/ Gregory Miles

9 Gregory A. Miles, Esq.
10 Royal & Miles, LLP
11 1522 W. Warm Springs Rd.
Henderson, NV 89014

12 For the Federal Defendants:

13 DANIEL G. BOGDEN
14 United States Attorney

15 /s/ Roger W. Wenthe

16 ROGER W. WENTHE
Assistant United States Attorney

17 For Counterclaim Defendant R.A.M.M. Corp.

18 /s/ Michael Stoberski

19 Michael E Stoberski
20 Olson, Cannon, Gormley, Angulo & Stoberski
21 9950 West Cheyenne Avenue
Las Vegas, NV 89129-

22 IT IS SO ORDERED.

23 Date: 5/6/16

24 
UNITED STATES MAGISTRATE JUDGE

25 CAM FERENBACH
26 U.S. MAGISTRATE JUDGE
27
28

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the persons shown, by the method shown, on the date shown.

CM/ECF

All counsel of record

Dated: March 25, 2016

/s/ Roger W. Wenthe
ROGER W. WENTHE
Assistant United States Attorney